

### **REMARKS**

Reconsideration of this application as amended is respectfully requested.

Claims 1-21 are currently pending. Claims 5, 6 and 8-18 are in condition for allowance.

#### **Priority**

The Examiner advises that the specification should be amended on page 1, before line 1, to read "This application is a divisional of U.S. Application Serial No. 10/107,671, filed March 26, 2002, now U.S. Patent No. 6,686,375," in order to claim for domestic priority. As suggested, applicants have amended the specification as suggested by the Examiner.

#### **Grammatical Review of Claims**

The Examiner also advises that Claims 1-34 should be reviewed for grammatical errors. The instant claims have been amended to correct grammatical errors.

#### **35 U.S.C. §112 Rejections**

The Examiner has rejected Claims 2, 3, 7, 20, 22 and 23 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. The Examiner's arguments are set forth on pages 2-3 of the Office Action.

Specifically, the Examiner points to the term "comprising" in Claims 2, 3, 7, 20, and 23 in the language of the Markush group. Applicants have amended Claims 2, 3, 7, and 20 by replacing the term "comprising" with the phrase "consisting essentially" in order to address the

Examiner's concerns. Claim 23 has been cancelled. Reconsideration and withdrawal of this 35 U.S.C. §112, second paragraph rejection is respectfully requested.

As an initial matter with respect to Claim 2, line 1, and the term "solvents," applicants assume that the Examiner intended to point to Claim 3, line 1 which has the phrase "polar solvents." Applicants have amended Claim 3 to replace "polar solvents" with "the polar solvent" in order be consistent with the recitation in claim 1 as the Examiner has suggested. Reconsideration and withdrawal of this 35 U.S.C. §112, second paragraph rejection is respectfully requested.

The Examiner has rejected Claim 22 for the term "using" which allegedly does not make clear any intended steps of the method. Applicants respectfully disagree with this rejection. However, applicants have cancelled Claim 22. Therefore this rejection is moot. Applicants respectfully request reconsideration and withdrawal of this 35 U.S.C. §112, second paragraph rejection.

### 35 U.S.C. §102 Rejections

The Examiner has rejected Claims 1-3, 19 and 20 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,548,086 ("'086 patent") to Maurya, et al. As noted by the Examiner, the cited reference (*i.e.*, the '086 patent) has a common assignee and common inventors with the instant application. Specifically, the Examiner points to the Maurya, et al. publication for teaching pharmaceutical compositions comprising an effective amount of an extract from the plant *Cryptolepis buchanani*. Applicants respectfully disagree with Examiner's contention.

The '086 patent claims methods of treating immunodeficiency in animals using plant extracts from *Cryptolepis buchanani*. However, the instant application claims compositions comprising extracts of the plant *Cryptolepis buchanani*, a method of producing the composition, and a method of treating a subject for developing hepatoprotection using the composition.

However, in order to expedite prosecution of the instant application, applicants submit herewith a Declaration Under 37 C.F.R. §1.132 stating that any invention disclosed but not claimed in U.S. Patent No. 6,548,086 to Maurya, et al. was derived from the inventors of the instant application, and is thereby not the invention "by another." Applicants respectfully request reconsideration and withdrawal of this 35 U.S.C. §102(e) rejection.

#### 35 U.S.C. §103 Rejections

The Examiner has rejected Claims 4 and 21 under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 6,548,086 to Maurya et al. since the skilled artisan would allegedly be able to determine the optimum ingredient proportions in order to provide the most effective therapeutic composition possible. Applicants respectfully disagree.

However, the Examiner has pointed out that the §103(a) rejection may be overcome by showing that any invention disclosed but not claimed in the cited '086 patent was derived from the inventors of the instant invention, and is thus not an invention "by another." Furthermore, since the application was filed after November 29, 1999, the Examiner suggests that the rejection may be overcome by showing that the subject matter of the '086 patent and the claimed invention of the instant application were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. Applicants submit a

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Declaration under 37 C.F.R. §1.132 stating that any invention disclosed but not claimed in U.S. Patent No. 6,548,086 was derived from the inventors of the instant application, and is thereby not the invention “by another” and further states that the subject matter of the reference and instant invention were, at the time the invention was made, owned by or subject to an obligation of assignment to the Council of Scientific and Industrial Research. Therefore, applicants respectfully request reconsideration and withdrawal of this 35 U.S.C. §103(a) rejection.

#### Comments Regarding Claims 5-18

Applicants acknowledge the Examiner’s comments that Claims 5-18 are not subject to 35 U.S.C. §103(a) rejections over the ‘086 patent to Maurya, et al.

#### Double Patenting Rejections

The Examiner has rejected Claims 22-34 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-13 of U.S. Patent No. 6,686,375 (“’375 patent”) to Qazi, et al. Specifically, the Examiner contends that the method of treating a subject for developing heptaoprotection by administering to the subject a composition from plant *Cryptolepis buchanani* of the ‘375 patent is not patentably distinct from the method of treating a subject for developing hepatoprotection by using a composition from plant *Cryptolepis buchanani*. Applicants respectfully disagree with this rejection. However, applicants have cancelled Claims 22-34. Therefore, this rejection is moot. Applicants respectfully request reconsideration and withdrawal of this double patenting rejection.

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Allowable Subject Matter

Applicants acknowledge that Claims 5, 6, and 8-18 are in condition for allowance.

CONCLUSION

In light of the foregoing, applicant believes that Claims 1-4, 7, and 19-21 as amended define patentable subject matter. An early allowance of all Claims 1-21 is earnestly solicited.

Respectfully submitted,

Dated: October 5, 2004



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